

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION  
SPECIAL ORDER BY CONSENT  
ISSUED TO  
VIRGINIA ELECTRIC AND POWER COMPANY**

**Permit No. VA0004146**

**SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Virginia Electric and Power Company, for the purpose of ensuring compliance with the State Water Control Law and Regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “VA Power” means Virginia Electric and Power Company, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. “Facility” means the VA Power, Chesterfield Power Station located in Chesterfield, Virginia.
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “Regulation” means 9 VAC 25-31-10, *et seq.*, the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. VA Power owns and operates an electric power generating facility in Chesterfield, Virginia. The Facility is subject to Virginia Pollutant Discharge Elimination System (VPDES) Permit No. VA0004146 (Permit). The Permit was issued on March 27, 1997 and expired on March 27, 2002. The Permit has been administratively continued.
2. On February 9, 2001, an air permit was issued which permitted the construction and operation of three Selective Catalytic Reduction (SCR) units for the control of Nitrogen Oxides (NOx) from stack emissions. The SCR units are designated as units 4, 5 and 6. Unit 6 is scheduled for completion in 2004. The Richmond/Chesterfield area is currently a Maintenance area for ozone and DEQ sampling data indicates the status will be degraded to Nonattainment once the new ozone standard takes effect. NOx is a precursor for the formation of ozone. By controlling NOx air emissions the formation of ozone is reduced. The use of SCR to control NOx air emissions will result in the discharge of wastewater containing nitrogenous compounds to the existing ash pond which discharges through outfall 004.
3. On May 14, 2002, a Letter of Agreement (LOA) was executed between DEQ and Va Power. This LOA allowed the operation of SCR unit No. 5 prior to the reissuance of the VPDES Permit. The VPDES Permit was anticipated to be issued by December 2002. Unit No. 5 was brought into operation upon the execution of the LOA. SCR unit No. 4 was scheduled to be operational in May 2003, and unit No. 6 is scheduled to be operational in May 2004. The LOA only addressed operation of unit No. 5.
4. The current administratively continued VPDES Permit does not authorize the discharge from SCR units 4, 5 and 6. The benefits gained to the environment from the control of the NOx air emissions far outweigh the impacts to state waters from the SCR wastewater discharges. The reissued VPDES Permit will address this impact.
5. In a letter dated May 9, 2003, VA Power requested that they be allowed to continue operating SCR unit 5 and to begin operation of SCR unit 4 prior to the reissuance of the VPDES Permit. Va Power subsequently requested authorization

to begin operation of SCR unit 6 should it also be operational prior to the reissuance of the VPDES Permit.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders VA Power, and VA Power agrees, to perform the actions described in Appendices A and B of this Order.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of VA Power, for good cause shown by VA Power, or on its own motion after notice and opportunity to be heard.
2. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, VA Power admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. VA Power consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. VA Power declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by VA Power to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. VA Power shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. VA Power shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. VA Power shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which VA Power intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and VA Power. Notwithstanding the foregoing, VA Power agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to VA Power. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve VA Power from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, VA Power voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Robert G. Burnley, Director  
Department of Environmental Quality

VA Power voluntarily agrees to the issuance of this Order.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Commonwealth of Virginia

City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 2003, by \_\_\_\_\_, who is  
(name)

\_\_\_\_\_ of VA Power on behalf of said corporation.  
(title)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

## **APPENDIX A**

VA Power shall:

1. Until the VPDES Permit is reissued, VA Power is authorized to discharge from outfall 004 in compliance with the interim limits contained in the attached Discharge Monitoring Report dated May 22, 2003 and entitled Appendix B.